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**FACSIMILE TRANSMISSION****DATE:** September 16, 2003**MATTER NUMBER:** 09901357

<b>RECIPIENT(S):</b>	<b>FAX NO.:</b>	<b>PHONE NO.:</b>
Examiner Marjorie Moran Art Unit 1631	1703 308-4242	1703 305-2363
Supervisory Examiner Michael Woodward USPTO	1703 872-9306	1703 208-4028

**FROM:** Norman Hanson**USER ID:** NH01030 **FLOOR:** 24**PHONE:** (212) 318-3168**FAX:** (212) 318-3400**RE:** U.S. Serial No. 09/265,606**NUMBER OF PAGES WITH COVER PAGE:** 3**Message:**

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**THANK YOU**

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## CERTIFICATE OF FACSIMILE TRANSMITTAL

LUD 5330.3 DIV (09901357)

I hereby certify that this correspondence is being transmitted via telefax pursuant to 37 CFR 1.8 to Group 1631 to Examiner M. Moran and Supervisory Examiner M. Woodward of the United States Patent & Trademark Office, on the date shown below:

Date: 9/16/03By: Fani Malikouzas

Fani Malikouzas

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s) : Rainer Zimmerman et al.  
Serial No. : 09/265,606  
Filed : March 10, 1999  
For : ISOLATED DIMERIC FIBROBLAST ACTIVATION  
PROTEIN ALPHA, AND USES THEREOF  
Group Art Unit : 1631  
Examiner : M. Moran

September 16, 2003

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTIFICATION OF  
DEFECTIVE APPEAL BRIEF**

Sir:

The Office Action of September 11, 2003, states that applicants' brief is defective.

The reason given is:

"(B)ecause arguments therein are directed to issues which are not appealable. Specifically, claim 22, which was subject to restriction and withdrawn from examination, is still pending."

It is agreed that claim 22 was subject to restriction. It is also agreed that it is still pending; however no arguments are presented within the Brief which are directed to

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claim 22. In fact, in the statement of the "Issues," in the "Grouping of Claims," and in the "Argument," claim 22 is absent from the discussion. In the "STATUS OF CLAIMS," it is expressly stated that claim 22 was withdrawn from consideration.

No rule or regulation requires an applicant to cancel non-elected claims when appeal is filed.

Note that, in fact, MPEP 1208 (page 1200-21), expressly states that:

"All withdrawn claims must be identified if the brief incorrectly lists any withdrawn claims."

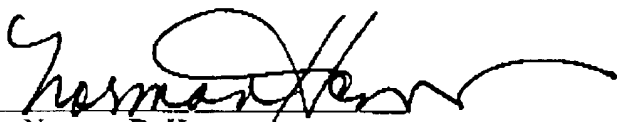
If the MPEP provides for correcting a listing of withdrawn claims, then clearly identifying withdrawn claims is appropriate.

No arguments were presented regarding claim 22, contrary to the Examiner's statements. There is no requirement that the non-elected claims be cancelled. There was no reason to deem the brief defective, and the holding should be withdrawn.

To facilitate expedited handling of this matter, this paper is being telefaxed, both to the Examiner, and to the Supervisory Examiner, to whom the undersigned will address a call in approximately 10 days should a withdrawal of the Notice not be immediately forthcoming.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

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